

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.151 OF 2007
IN
SUIT NO.3106 OF 2006**

M/s.Bhuruka Gases Ltd. ..Plaintiff

V/s.

M/s.Mukund Ltd. ..Defendant

Mr.Ajay Panicker for the plaintiff
Mr.Virag Tuljapurkar, Sr.Counsel with Mr.Ranjit
Shetty i/b. M/s.PDS LEGAL for the defendant

CORAM : S.A.BOBDE, J.

DATE : 31ST JANUARY, 2007

P.C.

1. By this notice of motion the plaintiff seeks an ad-interim injunction directing the defendant to take a delivery of the balance quantity of 15,40,737 cubic meters liquid oxygen gas out the total of 36 Lakhs cubic meters Liquid Oxygen as agreed to purchase under the agreement dated 8th

March, 2004 within a reasonable period of time and in the alternative for a direction to the defendant to deposit a sum of Rs.1,24,79,970/- being the price for the aforesaid quantity.

2. The plaintiff has sued under an agreement dated 8th March, 2004 for a decree in the sum of Rs.68,80,596.50/- and as prayed for money decree and for specific performance of the agreement dated 8th March, 2004 which is due to expire on 8th March, 2007. The plaintiff has also prayed for compensation at the rate of Rs.8,10,000/- per month amongst other reliefs.

3. According to the plaintiff, the defendant has agreed to purchase liquid oxygen manufactured by the plaintiff at the rate of Rs.8.10 paise cubic meter for a period of three years. The plaintiff agreed to supply liquid oxygen. However, the defendant has taken delivery of only 20,59,263 cubic meter of liquid oxygen gases, leaving a

balance of 15,40,737 cubic meter gases, worth Rs.1,24,79,970/-. Therefore, the defendant seeks an order in this notice of motion under Section 39 of the Specific Relief Act, 1963 for directing the defendant to take delivery of liquid oxygen or pay the value thereof. Section 39 of the Specific Relief Act, 1963 reads as follows :-

"39.Mandatory injunctions - When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts."

4. There is no doubt about power of the Court to grant such an order but that is not usually done by way of interim injunction, Mandatory injunction are normally granted after evidence is taken and Court is sure about the rights and obligations of the parties. Even, otherwise as contended by Mr.Virag Tuljapurkar, the learned counsel for the defendant this contract may not be enforceable. In view of Section 14, which provides that the

contract, for the non-performance of which, compensation in money is adequate, is not specifically enforceable. In this case the plaintiff has in fact made a prayer for compensation in the suit. Having regard to the provision of Section 14 I consider it appropriate to reject plaintiff's prayer notice of motion for injunction. Order accordingly. Notice of motion disposed of.

(S.A.BOBDE, J.)